

REMARKS

In response to the above-identified Office Action (“Action”), Applicant traverses the Examiner’s rejection to the claims and seeks reconsideration thereof. Claims 1-28 are pending in the instant application. In this response, claims 1, 2, 6, 16, 19 and 26 are amended, no claims are added and claims 7 and 11-15 are cancelled.

I. Amendments to the Claims

Applicant respectfully submits herewith amendments to claims 1, 2, 6, 16, 19 and 26.

Claims 7 and 11-15 are cancelled.

Claim 1 is amended to clarify that the property sheet data structure is “a property sheet data structure representing configuration information associated with at least one component within a clustered system” and “the property sheet data structure to allow centralized management of the clustered system.” Support for the amendments to claim 1 may be found, for example, on pages 4 and 5, paragraph [0017]; 7, paragraph [0025] of the Application. Claim 2 is amended to be consistent with claim 1 from which it depends.

Claim 6 is amended to incorporate the limitations of claim 7, namely, “automatically updating the default parameters included in the property sheet with a different default parameter with a corresponding property of a replacement component in response to changing the component.”

Claims 16 and 19 are amended to recite “a property sheet containing configuration information associated with a component contained within a cluster.” Support for the amendments may be found, for example, on page 7, paragraph [0025] of the Application.

Claim 26 is amended to recite “a property sheet data structure representing configuration information associated with at least one component within a clustered system.” Support for the

amendments to claim 26 may be found, for example, on pages 4 and 5, paragraph [0017]; 7, paragraph [0025] of the Application.

Thus, the amendments are supported by the specification and do not add new matter. In view of the foregoing, Applicant respectfully requests consideration and entry of the amendments

II. Claim Rejections – 35 U.S.C. §112, second paragraph

A. In the outstanding Action, the Examiner rejects claims 8, 9, 24, 25 and 28 under U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner alleges that use of the terms “if” or “may be” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See Action, page 2. The Examiner cites to MPEP §2173.05(d) in support of his conclusion. This portion of the MPEP discusses when it is appropriate to reject exemplary claim language under 35 U.S.C. §112, second paragraph. Applicant respectfully traverses the rejection for at least the following reasons.

The relevant inquiry under 35 U.S.C. §112, second paragraph, is whether the claims meet the threshold requirements of clarity and precision, i.e. whether the claims define the patentable subject matter with a reasonable degree of particularity and distinctness. See MPEP §2173.02. The Examiner must not consider the claims in a vacuum and instead consider the claim as a whole to determine if the language apprises one of ordinary skill in the art of its scope and therefore serves the notice function required by 35 U.S.C. §112, second paragraph. See MPEP §2173.02. Moreover, although claims may be rejected for use of exemplary claim language as described in MPEP §2173.05(d), cases where such rejections have been found appropriate are fact specific and should not be applied as *per se* rules in every case. See MPEP §2173.05(d).

Applicant respectfully submits the Examiner appears to be improperly analyzing the claims in a vacuum in reaching the conclusion that use of the term “if” renders the claims indefinite. In particular, the Examiner states it is unclear whether the limitation after the term

“if” is part of the invention. Applicant does not understand how it can be made any clearer that a limitation is part of an invention than by expressly reciting it in a claim. The fact that the term “if” appears before the limitation does not somehow delete it from the claim. Moreover, the portion of the MPEP relied upon by the Examiner in rejecting the claims on this basis, namely MPEP §2173.05(d), refers to exemplary language including “for example” and “such as”. The term “if” is categorically not exemplary language but rather is a conditional indicator and is a positive limitation. In addition, as stated in this section, cases where exemplary claim language has been found indefinite are fact specific and should not be applied as *per se* rules. Thus, a rejection of the claims in the instant case in which it is questionable whether exemplary language is even recited is certainly improper.

Lastly, Applicant respectfully submits, upon viewing the claim as a whole the scope of each claim is clear. For example, claim 8 recites “determining if a custom parameter included in the property sheet is valid with the changed component.” One of ordinary skill in the art would clearly understand that regardless of whether the custom parameter is valid, a determination as to whether the custom parameter included in the property sheet is valid with the changed component must still be made. A similar analysis applies for claims 9, 24, 25 and 28. Thus, clearly the limitations recited after the term “if” in the claims is part of the invention.

In view of the foregoing, Applicant respectfully submits claims 8, 9, 24-25, 28 are in compliance with 35 U.S.C. §112, second paragraph. For the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8, 9, 24, 25, 28 under 35 U.S.C. §112, second paragraph.

III. Claim Rejections – 35 U.S.C. §101

In the outstanding Action the Examiner rejects claims 7-15 under 35 U.S.C. § 101 alleging that the claimed invention is directed to non-statutory subject matter. In particular, the Examiner states “[d]ata structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer” and cites to In re Warmerdam, 31 USPQ2d 1754 (Fed. Cir.

1994) as support for this conclusion. See Action, pages 2-3. The Examiner further states claims 7-15 do not produce a tangible result and “claims that do not in any way make tangible any results are also not statutory.” See Action, page 3. Applicant respectfully traverses the rejections.

As previously discussed, claims 7 and 11-15 are cancelled therefore the instant rejection with respect to these claims is moot.

In regard to claims 8-10, Applicant respectfully disagrees with the Examiner’s rejection at least for the reason that claims 8-10 depend from claim 6. As evidenced by the Examiner’s failure to reject claim 6 on this basis, claim 6 is directed to statutory subject matter. Thus, for at least the reason that the Examiner finds claim 6 is directed to statutory subject matter, claims 8-10 further include statutory subject matter.

The Examiner’s rejection of the claims on this basis must further fail for at least the reason that the Examiner applies an improper standard in determining whether the claims are directed to patentable subject matter based on rules not present in the MPEP or the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (“Guidelines”). The standard applied by the Examiner in rejecting the claims on this basis is further inconsistent with relevant case law.

Contrary to the Examiner’s assertion, In re Warmerdam does not stand for the general proposition that a data structure *per se* is nonstatutory. The claim at issue in the holding cited by the Examiner was a dependent claim reciting “6. A data structure generated by the method of any of Claims 1 through 4.” In re Warmerdam, 31 USPQ2d at 1760. Upon reviewing claim 6, Court had already determined that claims 1-4 were directed to nothing more than the manipulation of abstract ideas and were therefore non-statutory subject matter. Id. at 759. The Court therefore concluded that “[s]ince the ‘data structure’ of claim 6 is nothing more than another way of describing the manipulation of ideas contained in claims 1-4, it suffers from the same fatal defect they do.” Id. at 760. The claims at issue in the instant case are not directed to simply a “data structure” and further claims 8-10 do not depend from a claim directed to non-

statutory subject matter. Thus, since the facts of the instant case are entirely different from those at issue in In re Warmerdam, the analysis in that case does not apply in the instant case.

Moreover, the Guidelines at IV.C.2.b (2) state that the “tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing.” Citing Diamond v. Diehr, 450 US 175, 187 (1981), the Guidelines state that “an application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection.” Under the Guidelines a claim need only provide “a useful, tangible and concrete result” such that it has a practical application. See Guidelines, IV.C.2.b. For example, the Court in State Street Bank & Trust Co. v. Signature Financial Group, 149 F.3d 1368 (Fed. Cir. 1998) held that:

“the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces ‘a useful, concrete and tangible result’ -- a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.” State Street Bank, 149 F.3d 1368, 1373.

Moreover, in AT & T Corp. vs. Excel Communications Inc., 50 USPQ 2d 1447, 1452 (Fed. Cir. 1999), the Court held that a primary interexchange carrier (PIC) produced by a boolean operator which provided information about the call recipient’s PIC was a useful, non-abstract result that facilitates differential billing of long-distance calls made by an IXC’s subscriber. See AT & T at 1452.

Applying a similar analysis to, for example, claims 8 and 9, the elements of determining if a custom parameter included in the property sheet is valid with a changed component and deselecting the custom parameter if it is not valid ensures that custom parameters of the property sheet are accurate. A person of ordinary skill in the art would understand that the accuracy of the parameters is directly linked to the management and performance of components within the

cluster system. Thus, these limitations are directed to a practical application that produces the useful, tangible and concrete result of accurate management of configuration parameters associated with components contained within a clustered system.

Thus, based on case law and the Guidelines, the claims are directed to patentable subject matter under 35 USC § 101. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 8-10 under 35 U.S.C. §101.

IV. Claim Rejections – 35 U.S.C. §102(b)

In the outstanding Action, claims 1, 19 and 26 are rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 6,366,915 issued to Rubert et al. ("Rubert").

It is axiomatic to a finding of anticipation that each element of a claim is found within a single prior art reference. In regard to claims 1, 19 and 26, Rubert fails to teach at least the element of “a property sheet data structure representing configuration information associated with at least one component within a clustered system” as recited in claims 1 and 26 or “a property sheet containing configuration information associated with a component contained within a clustered system” as recited in claim 19. Rubert further fails to teach “centralized management of the clustered system” as further recited in claim 1.

The Examiner has not pointed to a portion of Rubert teaching these elements and in fact admits Rubert fails to teach a property sheet associated with a component contained within a clustered system. See Action, page 6. Applicant is further unable to discern a portion of the reference teaching “configuration information associated with at least one component of a clustered system.” Instead, Rubert teaches a system for retrieving information from one of several databases. See Rubert, Abstract. In particular, a user may select a report form displayed on a user interface screen and then enter a parameter value or query. See Rubert, col. 5, lines 55-67. The user then requests execution of the query to view the results. See Rubert, col. 5, lines 55-67. Thus, the system disclosed in Rubert merely allows the user to search for and view a desired report. The system does not provide “configuration information associated with at least

one component within a clustered system” or “a component within a clustered system” much less “centralized management of the clustered system.”

For at least the foregoing reasons, Rubert fails to teach each and every element of claims 1, 19 and 26. Since each element of the claims is not found within the reference, anticipation may not be established. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 19 and 26 under 35 U.S.C. §102(b) as anticipated by Rubert.

V. Claim Rejections – 35 U.S.C. §103(a)

A. In the outstanding Action, claims 2, 6, 8-11, 13 and 15-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rubert in view of U.S. Patent No. 6,564,261 issued to Gudjonsson et al ("Gudjonsson"). Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, the Examiner must show that the cited reference teaches or suggests each of the elements of a claim. Hindsight reconstruction may not be used to modify the reference to meet the claimed invention. MPEP § 2145. Furthermore, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art, without some showing of an objective reason for modifying the reference to arrive at the claimed invention, is not sufficient to establish a *prima facie* case of obviousness. *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

Claims 11, 13 and 15 are cancelled in the instant response therefore the rejection of these claims is moot.

Claim 2 depends from claim 1 and incorporates the limitations thereof. For at least the reasons previously discussed in regard to claim 1, Rubert fails to teach or suggest at least the elements of “a property sheet data structure representing configuration information associated with at least one component within a clustered system” and “centralized management of the clustered system” as further found in claim 2. The Examiner has further not pointed to, and Applicant is unable to discern, a portion of Gudjonsson teaching each of these elements. Since

each of the elements of claim 2 are not taught or suggested by the references, alone or in combination, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 2 under 35 U.S.C. 103(a).

In regard to claim 6, Applicant respectfully submits the references fail to teach or suggest at least the elements of “changing the component contained within the clustered system and automatically updating the default parameters included in the property sheet with a different default parameter with a corresponding property of the component in response to changing the component” as recited in claim 6.

The Examiner admits Rubert fails to explicitly teach these elements on pages 6 and 19 of the Action. Gudjonsson does not cure the deficiencies of Rubert with respect to these elements. The Examiner alleges col. 18, lines 24-28 of Gudjonsson teaches changing the component contained within the clustered system and updating parameters. See Action, page 6. This portion of Gudjonsson teaches an administrative tool which notifies components in a cluster of changes to settings. Merely providing notification of changes to settings does not explicitly teach updating parameters in a property sheet.

Moreover, in anticipation of the Examiner relying upon Publication No. 2005/0114315 to Tanner et al ("Tanner") to teach this element, Applicant respectfully submits Tanner further fails to teach this element. In particular, the portion of Tanner relied upon by the Examiner to teach automatic updating of default parameters on page 19 of the Action, namely paragraphs [0065] and [0066], merely teaches a multi-row edit function for changing a data item appearing in multiple rows through a user operation. Applicant respectfully submits the changing of data items by a user may not be characterized as “automatically updating” as recited in claim 6. Moreover, this portion of Tanner does not indicate that the data items changed are default parameters with a corresponding property of a component contained within a clustered system. Applicant respectfully requests the Examiner particularly point out where within the reference at least these elements of claim 6 are taught if the Examiner chooses to rely on the reference in rejecting claim 6.

Lastly, Applicant respectfully submits, even if it were possible to identify a portion of Tanner teaching these elements of claim 6, and Applicant does not believe it is, there is no motivation to combine Rubert and Tanner. Rubert is directed to a server based information retrieval system that includes database servers linked to an information reporter system that is in turn linked to a client computer system. See Rubert, Figure 3. The database servers provide the information reporter system access to various databases upon request by a user. See Rubert, col. 8, lines 10-25. In contrast, Tanner discloses a network device for managing configuration data across multiple network devices with minimal error by editing groups of data. See Tanner, paragraph [0025]. Upon review of the references, one of ordinary skill in the art would not recognize any advantage to incorporating the network device of Tanner into Rubert since Rubert does not contemplate modifying configuration data of components within the system or data errors such that there would be a need to manage such data.

Thus, for at least the foregoing reasons, neither Rubert, Gudjonsson nor Tanner, alone or in combination, teach or suggest each of the elements of claim 6. Since each of the elements of claim 6 are not taught or suggested by the references, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 6 under 35 U.S.C. 103(a) in view of Rubert and Gudjonsson.

Claims 8-10 depend from claim 6 and incorporate the limitations thereof. Thus, for at least the reasons discussed in regard to claim 6, claims 8-10 are further not *prima facie* obvious over Rubert in view of Gudjonsson. Moreover, in regard to claims 8 and 9, for at least the reasons previously discussed, the limitations recited in these claims are not optionally recited limitations therefore contrary to the Examiner's assertion on page 7 of the Action, these limitations must be taught or suggested by the references to establish a *prima facie* case of obviousness. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8-10 under 35 U.S.C. 103(a).

In regard to claim 16, the references fail to teach or suggest at least the element of "providing a property sheet containing configuration information associated with a component contained within a cluster" as recited in claim 16. The Examiner states "Rubert does not

explicitly indicate ‘providing a property sheet associated with a component contained within a cluster’.” See Action, page 10. Instead, the Examiner relies upon Gudjonsson col. 18, lines 24-28 to teach this element alleging “Gudjonsson discloses ‘providing a property sheet associated with a component contained within a cluster’.” See Action, page 10. Applicant has reviewed this portion of Gudjonsson and fails to discern a portion of Gudjonsson teaching or suggesting “a property sheet” as alleged by the Examiner much less one “containing configuration information associated with a component contained within a cluster” as further recited in amended claim 16. This portion of Gudjonsson merely teaches an administrative tool allowing system administrators to change settings of a system and notify components in a cluster of the changes. See Gudjonsson, col. 18, lines 24-28. There is no express teaching of any sort of relationship between a property sheet containing configuration information of a component within the cluster. Thus, for at least the foregoing reasons, claim 16 is not *prima facie* obvious over Rubert in view of Gudjonsson. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 16 under 35 U.S.C. 103(a).

Claims 17 and 18 depend from claim 16 and incorporate the limitations thereof. Thus, at least for the reasons that claim 16 is not *prima facie* obvious over Rubert in view of Gudjonsson, claims 17 and 18 are not obvious over the references. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8-10 under 35 U.S.C. 103(a).

B. In the outstanding Action, claims 3-5, 20-25, 27 and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rubert in view of Tanner. Applicant respectfully traverses the rejections.

In regard to claims 3-5, these claims depend from claim 1 and incorporate the limitations thereof. Thus, for at least the reasons discussed in regard to claim 1, neither Rubert nor Tanner, alone or in combination, teach or suggest each and every element of claims 3-5. Since each of the elements of claims 3-5 are not found within the references, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 3-5 under 35 U.S.C. 103(a) over Rubert in view of Tanner.

In regard to claims 20-25, these claims depend from claim 19 and incorporate the limitations thereof. For at least the reasons previously discussed in regard to claim 19, Rubert fails to teach or suggest at least the element of “a property sheet containing configuration information associated with a component within a clustered system” as further found in claims 20-25. The Examiner has further not pointed to, and Applicant is unable to discern, a portion of Tanner teaching or suggesting this element. Moreover, in regard to claims 21, 24 and 25, for at least the reasons previously discussed, the limitations recited in these claims are not optionally recited limitations therefore contrary to the Examiner’s assertion on pages 15 and 17 of the Action, these limitations must be taught or suggested by the references to establish a *prima facie* case of obviousness. Since each of the elements of claims 20-25 are not found within the references, alone or in combination, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 20-25 under 35 U.S.C. 103(a) over Rubert in view of Tanner.

In regard to claims 27 and 28, these claims depend from claim 26 and incorporate the limitations thereof. For at least the reasons previously discussed in regard to claim 26, Rubert fails to teach or suggest at least the element of “a property sheet data structure representing configuration information associated at least one component within a clustered system” as further found in claims 27 and 28. The Examiner has further not pointed to, and Applicant is unable to discern, a portion of Tanner teaching or suggesting this element. Moreover, in regard to claim 28, for at least the reasons previously discussed, the limitations recited in this claim are not optionally recited limitations therefore contrary to the Examiner’s assertion on page 18 of the Action, these limitations must be taught or suggested by the references to establish a *prima facie* case of obviousness. Since each of the elements of claims 27 and 28 are not found within the references, alone or in combination, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 27 and 28 under 35 U.S.C. 103(a) over Rubert in view of Tanner.

C. In the outstanding Action, claims 7, 12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rubert in view of Gudjonsson, and further in view of Tanner.

Claims 7, 12 and 14 are cancelled in the instant response therefore the rejection to the claims on this basis is moot.

CONCLUSION

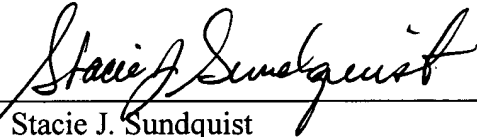
In view of the foregoing, it is believed that all claims now pending, namely Claims 1-6, 8-10 and 16-28, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: 9/29/2006

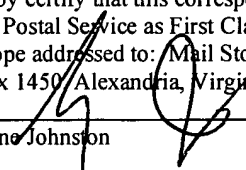
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